

STATE OF MICHIGAN
COURT OF APPEALS

CONNIE MALLOY, Personal Representative of
the Estate of MICHAEL MALLOY, Deceased,

UNPUBLISHED
August 21, 2001

Plaintiff-Appellant,

v

No. 223045
Alpena Circuit Court
LC No. 98-002762-NI

JOHN CLAYTON MCCLURE, d/b/a JOHN
CLAYTON MCCLURE TRUCKING,

Defendant-Appellee,

and

NEMROC CORPORATION,

Defendant.

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant McClure's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

McClure delivered a load of logs to a yard operated by defendant Nemroc Corporation. On that same day, decedent died when a rock broke his windshield and struck him. McClure, who had been driving on the same street at the time the accident occurred, inspected his truck and found signs that a rock had dislodged from one of his tires. McClure informed the police that a rock might have lodged in a tire when he drove through Nemroc's yard.

Plaintiff filed suit against McClure and Nemroc, alleging that McClure breached a duty to inspect his truck prior to leaving Nemroc's yard to ensure that no rocks were lodged in the tires, and that Nemroc breached its duty to maintain its yard in a reasonably safe condition. Subsequently, plaintiff settled her claim against Nemroc.

* Circuit judge, sitting on the Court of Appeals by assignment.

McClure moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that he had no duty to inspect his truck prior to leaving Nemroc's yard. The trial court granted the motion, noting that no law or regulation required McClure to inspect his truck prior to leaving Nemroc's yard, and that the accident that befell decedent was not reasonably foreseeable.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. Whether a duty exists depends on the relationship between the actor and the injured party. In determining whether a duty exists, a court must consider the foreseeability of the harm, the relationship between the parties, the degree of certainty of injury, the closeness of the connection between the conduct and the injury, any moral blame attached to the conduct, any policy of preventing future harm, and the consequences of imposing a duty and the resulting liability for breach. *Krass v Tri-County Security, Inc*, 233 Mich App 661, 667-669; 593 NW2d 578 (1999). Generally, whether a duty exists is a question of law for the court. However, if the determination of duty depends on factual findings, those findings must be made by the jury. *Holland v Liedel*, 197 Mich App 60, 65; 494 NW2d 772 (1992).

Plaintiff argues that the trial court erred by granting McClure's motion for summary disposition. We disagree and affirm. On the day the accident occurred, prior to beginning work, McClure inspected his truck and found that it was safe to operate. Plaintiff's expert witness acknowledged that under federal regulations, if after an initial inspection a truck is found to be free of defects, any subsequent inspections during the day are at the discretion of the driver. The evidence showed that McClure made regular deliveries to Nemroc's yard; however, no evidence showed that McClure knew that on any previous occasion a rock from that yard had lodged in a tire on his truck. If the events leading to an injury are not foreseeable, a duty does not exist, and summary disposition is appropriate. *Johnson v Detroit*, 457 Mich 695, 711; 579 NW2d 895 (1998). The trial court correctly concluded that McClure had no duty to inspect his truck before leaving Nemroc's yard because the unusual sequence of events which resulted in decedent's death was simply not reasonably foreseeable. Summary disposition was properly granted. *Id.*

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel